



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JULY 13, 2022

IN THE MATTER OF:

Appeal Board No. 621606

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 621573 and 621606, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed February 14, 2022, which granted the claimant's application to reopen A.L.J. Case Nos. 021-46953 and 021-46954, overruled the Commissioner of Labor's timeliness objection, and overruled the initial determinations disqualifying the claimant from receiving benefits, effective July 3, 2019, on the basis that the claimant voluntarily separated from employment without good cause; and charging the claimant with an overpayment of \$1,656.75 in Pandemic Emergency Unemployment Compensation (PEUC) benefits repayable pursuant to § 2107 (e) (2) of the Coronavirus Aid,

Relief, and Economic Security (CARES) Act of 2020, \$12,000.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to §

2104 (f) (2) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and Lost Wages Assistance benefits of \$1,500.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5).

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant did not receive the Notice of Hearing or hearing packet for a hearing that was held on January 10, 2022. When the claimant received a phone call from the Judge, the claimant told the Judge

that she had not received the hearing notice. The Judge told the claimant that the case would be closed, and the claimant could apply to reopen. The claimant applied to reopen by submitting an email that same day.

OPINION: The credible evidence establishes that the claimant answered her phone and appeared at the hearing held on January 10, 2022, but she was not aware of the hearing in advance because she had not received the Notice of Hearing. The Judge allowed her to default with leave to apply to reopen, and she submitted her application to reopen that same day. These circumstances establish good cause to excuse the claimant's default, and the claimant applied to reopen within a reasonable time. Accordingly, we conclude that the claimant's application to reopen is granted.

Our review of the record, however, reveals that the case should be remanded to hold a hearing concerning the timeliness of the claimant's hearing request. At the hearing, the claimant testified that she had not received the hearing packet prior to the hearing and was unable to open it when it was emailed to her during the hearing. As a result, she was unable to see the Notices of Determination and therefore could not testify with certainty with respect to whether or when she might have received those documents. Prior to the remand hearing, the Department of Labor shall produce the Notices of Determination, any hearing requests the claimant submitted prior to October 20, 2021, the Claimant Information Handbook, and any instructions to claimants regarding updating their mailing address with the Department of Labor. The claimant shall produce a copy of any hearing request submitted prior to October 20, 2021. At the remand hearing, the Judge shall confront the claimant with the Notices of Determination and the mail dates of these documents, and shall question the claimant with respect to whether and when she received the Notices of Determination. The Judge also shall question the claimant with respect to whether and when she arranged with the post office to have her mail forwarded to her new address, whether and when she notified the Department of Labor of her change of address, whether she knew that she needed to update her address with the Department of Labor, and when she submitted her first hearing request. The Judge shall take such further testimony and evidence as may be necessary to complete the record.

DECISION: In Appeal Board Nos. 621573 and 621606, the decisions of the Administrative Law Judge, insofar as they granted the claimant's application to reopen A.L.J. Case Nos. 021-46953 and 021-46954, are affirmed.

In Appeal Board Nos. 621573 and 621606, the decisions of the Administrative Law Judge, insofar they overruled the Commissioner of Labor's timeliness objection and the initial determinations of voluntary separation from employment without good cause and recoverable overpayments of FPUC, PEUC and LWA benefits, are rescinded.

The claimant's application to reopen A.L.J. Case Nos. 021-46953 and 021-46954 is granted.

Now, based on all of the foregoing, it is

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of voluntary separation from employment without good cause and recoverable overpayments of FPUC, PEUC and LWA benefits, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issues of voluntary separation from employment without good cause and recoverable overpayments of FPUC, PEUC and LWA benefits, only; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the remanded issues only, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER